

The opinion in support of the decision being entered today is
not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TADAMASA KITSUKAWA

Appeal 2006-3135
Application 09/802,638
Technology Center 2600

Decided: August 13, 2007

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO,
and HOWARD B. BLANKENSHIP, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1, 2, 4 through 7, and 9 through 14. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a).

As best representative of the disclosed and claimed invention, representative independent claim 1 is reproduced below:

1. A method for allowing access to at least one Web site using an interactive television, comprising the acts of:

establishing an access restriction table, the access restriction table including plural virtual channels, each virtual channel correlating to at least one Web site address;

making the access restriction table accessible to the television;

selectively enabling a consumer to access a Web site address using the interactive television by selecting a virtual channel; and

setting a restriction flag on at least one entry in the table, the flag indicating whether content associated with the entry can be displayed.

The following references are relied on by the Examiner:

| | | |
|--------------|--------------------|---|
| Watson | US 5,289,271 | Feb. 22, 1994 |
| Matthews III | US 5,914,746 | Jun. 22, 1999 |
| Stinebruner | US 6,133,910 | Oct. 17, 2000 |
| Breslauer | US 6,637,027 B1 | Oct. 21, 2003 |
| | | (Filed March 16, 2000) |
| Linehan | US 2004/0249726 A1 | Dec. 9, 2004 |
| | | (Effective filing date December 21, 1999) |

Claims 1, 2, 4 through 7, and 9 through 14 stand rejected under 35 U.S.C. § 103. As evidence of obviousness in a first stated rejection, the Examiner relies upon Matthews in view of Stinebruner, further in view of Breslauer as to claims 1 and 6. Next, in a second stated rejection, the Examiner relies upon Matthews in view of Breslauer as to claims 2, 4, and 5. To this latter combination of references the Examiner adds Watson as to claims 7 and 9 through 11 in a third stated rejection. Lastly, in a fourth

stated rejection as to claims 12 through 14, the Examiner relies upon Matthews in view of Watson, further in view of Linehan.

Rather than repeat the positions of the Appellant and the Examiner, reference is made to the Brief and Reply Brief for Appellant's positions, and to the Answer for the Examiner's positions.

OPINION

For the reasons generally set forth by the Examiner in the Answer, as expanded upon here, we sustain the respective rejections of all claims on appeal. Appellant presents arguments only as to independent claims 1, 2, 7, and 12, and dependent claim 11. Since no arguments are presented to us as to any other dependent claims on appeal, the rejections of them are affirmed for the same reasons as their respective independent claims. Any arguments that could have been made as to these dependent claims have been waived.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1996). "[T]he Examiner bears the initial burden on review of the prior art or on any other ground, of presenting a *prima facie* case of

unpatentability.” *In re Oetiker*, 977 F.3d 1443, 1445, 24 USPQ 1443, 1444 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

Although we have concluded that the Examiner has fully met the above noted case law requirements for obviousness within 35 U.S.C. § 103, it appears to us that the actual teachings of the applied prior art are more compelling of a rationale to combine the respective teachings than the parties before us appear to have realized. As such, we present a more extensive and reordered analysis of Breslauer consistent with the Examiner’s views, a reference about which Appellant’s Brief and Reply Brief have little to say. With these general considerations in mind, we further note that each of independent claims 1, 2, and 7 in some manner relate to Web pages or Web sites, whereas independent claim 12 has no such limitation.

Turning first to Matthews, this interactive TV system is consistent with the disclosed and claimed invention. The Background discussion at column 1, lines 15 through 17 and 45 through 47 are noteworthy with respect to their suggestibility of utilizing this ITV system of Matthews in a Web-based environment. This capability is further suggested by the lengthy discussion at column 3, lines 4 through 31 with the more specific teaching at

column 4, lines 11 through 14 indicating that the use of IP or internet protocols strongly suggest to the artisan/reader of Matthews that this reference is capable of accessing Web sites as a broadcast source. These teachings are further buttressed by the characterization and illustration of the virtual channel table 32 from figure 2 in figure 3 and the corresponding discussion of element 46 as being various executable applications.

If these teachings are not strongly suggestive of the environment of use including Web pages, Breslauer clearly confirms the applicability of interactive television systems, such as his, as being inclusive of accessibility to Web-based information sources. Appellant's own Specification at page 2 relates teachings of the prior art to Web TV to which Breslauer has assigned his invention. This is further discussed at column 5, beginning at line 11 as well. Again, the teaching value of Breslauer at its most basic level includes the ability to have an interactive television based upon or inclusive of Web pages. Therefore, in accordance with earlier noted case law, the teachings of Matthews and Breslauer were easily combinable within 35 U.S.C. § 103 as to independent claims 1, 2, and 7 at a minimum.

As to the access restriction table among independent claims 1, 2, and 7 on appeal, Matthews plainly teaches this capability in figure 2 as element 32 and further shown in figure 3. The teachings at column 4 of Matthews and illustrations in the discussed figures 2 and 3 clearly convey to the artisan the ability of the user to designate or otherwise choose by the use of the keypad 16 any (virtual) channel number to correlate with a so-called "broadcast" channel. The broad recitation at the end of independent claim 2 on appeal that one such virtual channel number may be a telephone number

is clearly inclusive within the broad teachings of this reference since even such a telephone number could be in the form of extension 100, which is taught within the numerical designations in the table 32 in figure 3. No patentable significance per se may be attributed to the mere recitation of the number being a telephone number, a capability which is within the meaning or intended meaning of the artisan or viewer. Thus, we agree with the Examiner's rejection of independent claim 2, relying upon the combination of Matthews and Breslauer. Appellant's positions at page 6 of the principal Brief recognize that Matthews teaches that a user may customize a channel number.

We turn next to the rejection of claim 1 upon which the Examiner additionally relies upon Stinebruner's teachings to reject this claim. Before we consider the teaching value of this reference, we note further teachings in Breslauer which, within the ITV environment of this reference, clearly are significant teachings of the ability to restrict access and therefore the display of acquired information on the presentation device or TV 150 in figure 1. Parental control teachings are first recognized at column 1, lines 60 through 65; the Summary of the Invention at column 2, lines 46 through 51, and the corresponding showings in figure 3 through 5 relating to conditional access managers and conditional limit providers which are discussed beginning at the top of column 4. The ability to control the presentation/display of information based upon a yes/no answer, that is, a determination to display or otherwise block information, is also set forth briefly at the top of column 3. Based upon these significant teachings, it appears to us that the artisan would have well recognized the ability in an ITV environment to otherwise

set restriction flags upon the accessibility of so-called virtual channels in Matthews.

The Examiner's further reliance upon Stinebruner buttresses the combinability with Matthews and further specifically states, as noted by the Examiner at column 5, lines 45 through 63, the ability of a parent to set a flag lock on respective virtual channels according to the table of virtual channels in figure 2 of Stinebruner. Additional teachings are noted at column 12, lines 27 through 36.

Therefore, the argued feature at the end of independent claim 1 on appeal of a restriction flag controlling accessibility as to what is to be displayed is clearly taught among the collective teachings of the applied prior art from an artisan's perspective. Appellant's arguments at pages 5 and 6 of the principal Brief on appeal fail to address any teaching value of Breslauer as to this claim. Moreover, it thus appears that there can be no prohibited hindsight arguments successfully made based upon the above noted teachings of Breslauer taken with Matthews, further in view of Stinebruner. Therefore, the rejection of independent claim 1 is sustained.

Next, we turn to the rejection of independent claim 7 and its respective dependent claim 11. Again, it is first noted that the Examiner relies upon Matthews in view of Breslauer. The argued feature of contention between the parties is the feature at the end of independent claim 7 relating to an access record containing billing information as broadly recited. What does not appear to be appreciated is that Breslauer already has significant teachings related to billing or costing displayed media. This is first discussed at column 1, lines 45 through 48, and the Summary of the

Invention at column 2, lines 44 through 47. The discussion of a smart card 226 in figure 2 occurs at column 7, lines 11 through 14, and the general, more persuasive teachings at column 10, line 65 through column 11, line 6.

Watson, therefore, builds upon these general billing concepts of Breslauer. The first sentence of the abstract relates to the ability of users to be charged by media providers based upon a user's actual usage or viewing time. Compelling teachings exist at column 2, lines 51 through 62, to indicate that all usage of any kind, whether public or private as recited in dependent claim 11, is capable of being billed. Since Breslauer and Watson both relate to different levels of understanding of billing usage of media provided by any media provider, the artisan would have readily concluded its applicability to the virtual channel environment of Matthews.

Lastly, we turn to the separate rejection of independent claim 12 based upon Matthews in view Watson, further in view of Linehan. Based upon the above noted assessment of Watson, it would have been clearly obvious to the artisan within 35 U. S.C. § 103 to have applied the capability and desirability of billing all usage of media according to Watson's teachings in the virtual channel environment of Matthews. What distinguishes independent claim 12 over the general recitation of billing information in independent claim 7 and the private viewing and public viewing capabilities of its dependent claim 11 is the dual recitation of the "if" clauses at the end of independent claim 12 to separately bill private viewing versus public viewing.

In light of Matthews and Watson, Linehan compels the conclusion of the obviousness of these alleged distinctions at the end of claim 12 on appeal. Linehan's interactive TV environment further enhances the general teaching of Watson for billing purposes and the Web-based environment of Matthews in its discussion of so-called electronic commerce at columns 1 and 2 of page 1 of this reference. In fact, Linehan characterizes this environment as "TV commerce." Within this environment of usage, it is clear from the teachings of Linehan that it would have been obvious to change the billing dynamics as generally set forth by Watson to selectively redesignate who will bear the cost, who will share or otherwise allocate or bear the cost among providers and users, which is the essence of the alternative recitations in the last two clauses of claim 12 on appeal.

Based upon this reordered and slightly expanded upon view of the teachings of the respective references, we are unpersuaded by Appellant's complaints in the Brief and Reply Brief of the Examiner's separately stated rejections of the independent claims on appeal. Therefore, the decision of the Examiner rejecting all claims on appeal under 35 U.S.C. § 103 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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